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Mark Friedrichs, PO-40
Office of Policy and International Affairs
U.S. Department of Energy
Room 1E109
Independence Ave., SW.,
Washington DC 20585

Dear Mr. Friedrichs,

Comments of BP America concerning DOE's Proposed Interim Final General Guidelines and Draft Technical Guidelines for Voluntary Greenhouse Gas Reporting (Federal Register March 24, 2005)

BP America is pleased to offer the following comments on DOE's proposed Interim Final General and Draft Technical Guidelines for Voluntary Greenhouse Gas Reporting (1605b). BP America is the organizational arm of BP plc that owns and operates the US assets formerly owned by our predecessor companies BP, Amoco, Arco, Vastar, and Burmah Castrol. While BP plc is based in London, 45% of our assets and employees are in the United States, and we are the US's largest producer of oil and gas.

BP America participated in the development of and fully supports the comments furnished to you by the American Petroleum Institute (API). The API comments are concerned principally with the conformance of DOE's proposed General and Technical Guidelines with the language, intent, and history of the Energy Policy Act's Greenhouse Gas voluntary reporting sections and the President Bush's directive to reform the program on 14 February 2002. API has gone into great technical detail in their review and we urge you to consider their comments carefully during your deliberations.

In addition, BP America offers the following comments:

1) There is a potential conflict between voluntary reporting under the proposed "Guidelines" and the publication of the Guidelines in the Code of Federal Regulation.

There continues to be a potential conflict between voluntary reporting in accordance with these "Guidelines", and the intended publication of the Guidelines in the Code of Federal Regulations (CFR) with all the trappings of a binding "regulation". DOE explicitly states in many places in the March 24 notice that the interim final General Guidelines are "rules", e.g., 56 Fed. Reg. 15176-77, and the Guidelines themselves contain many provisions that clearly intend to impose mandatory requirements on reporting entities.

However, there is a fundamental distinction between "guidelines" (or guidance), which by definition are not binding, and substantive "regulations", which by definition impose binding requirements. Notwithstanding that sec. 1605(b) itself only authorizes "guidelines" and not

regulations, DOE appears to be blurring the distinction between guidance and rules here, and creating some sort of hybrid which purports to be voluntary and non-binding in some respects and yet mandatory in others. See, e.g., 56 Fed. Reg. 15186. The “quasi-regulatory” nature of the General Guidelines may both exceed DOE’s statutory authority and cause future confusion on the part of potential participants under the 1605(b) voluntary GHG reporting program. Such confusion is exacerbated by DOE’s ambiguous statement in the March 24 Federal Register notice that publishing the General Guidelines in the CFR “does not affect their nature as substantive or procedural or legally binding or non-binding”. 56 Fed. Reg. 15177. Incorporating the Draft Technical Guidelines by reference in the General Guidelines seems to also draw them into this “quasi-regulatory” regime.

2) The definition and use of the terms entity and subentity could lead to misuse and incorrect interpretation of the reported data.

DOE has tried to clarify the definition of an “entity” for use in entity-wide reporting. However, the fact that reporters retain the flexibility to establish their own approach to entity definitions, rather than requiring reporting at the highest (parent company) level in the US, is likely to provide a skewed view of true entity-wide emissions and make comparison across firms impossible and could lead to gaming and misrepresentation of true entity-wide emission reductions.

The intermingling of the terms entities and subentities could lead to an uneven playing field. The ability of entities to obtain registered emission reductions will depend on the different legal constructs of entities in the same industry sector. For example, a vertically integrated Oil & Gas company that decides to define itself at the highest level that includes production, refining and marketing subentities might have more of a barrier for registering net GHG emission reductions then, for example, competitors that elect to merely register their refining subentity. DOE should require reporting at the highest (parent company) level in the US.

3) The definition of Significance Threshold should be amended.

The DOE has removed the total emissions cap from its definition of de minimis emissions, while retaining the 3% cut-off in the interim final General Guidelines. While we support removal of the total emissions level, it is important to note that the definition selected by DOE is not consistent with other protocols that are widely used in the US and globally. Programs like the EU Emission Trading Scheme, the California Climate Action Registry, and the Chicago Climate Exchange have adopted a 5% definition for insignificant emissions. The 5% level is in line with the concept of material misstatement found in general financial accounting practices. The WRI/WBCSD GHG Protocol and the IPIECA/API Petroleum Industry Reporting Guidelines invoke the concept of “materiality” to allow companies to define specifically what GHG emissions might be de minimis within the context of their operations. For these reasons, BP recommends DOE use a 5% de minimis level.

DOE should also consider making provision for accepting industry studies that would serve as a “once and for all” determination of de minimis gases and sources for industry sectors. For example, the petroleum industry has conducted a study that indicates that fugitive methane emissions from refineries are well below de minimis for US refineries. This type of determination would improve the efficiency of the program and transparency of inventories.

4) The definition of sequestration in the interim final General Guidelines needs to be changed to that used by DOE in the April 26th 2005 Workshop.

The definition of sequestration presented on page 15183 of the Federal Register is too narrow and pertains only to carbon capture from the atmosphere. It should be changed to the definition presented by DOE during the April 26th, 2005 plenary of the public workshop (slide 38) that states, “*Sequestration: Long term removal (or prevention of release) CO₂ from (into) the atmosphere by biological or physical processes*”. In this way the definition incorporates both

sequestration by the terrestrial biosphere as well as direct carbon capture (i.e. prior to being emitted to the atmosphere) followed by CO₂ storage in geological formations.

5) Clarification of definitions and deadlines for the reporting process

DOE has established a timeline for the reporting process and have encouraged companies to have their inventories and reduction calculations verified by an independent 3rd party for verification on an annual basis. The guidelines are unclear on what exactly is due by July 1st. Is it just the inventory and reduction report or is it both the inventory report and the verification? DOE needs to clarify what is due by July 1st. Also, the July deadline for verification will be difficult for many companies to meet. DOE should request inventory calculations by July 1st but delay verification report until the end of the year with opportunity for correct. This will ease the resource burden on the companies and on DOE's ability to review the submissions in a timely manner. It would also increase the likelihood of a company's use of 3rd party verification.

The general guidelines should recognize the potential need for extension of the reporting deadline under certain circumstances, such as when major business changes occur. It particularly needs to also make provisions for extending the reporting timeline if the DOE (EIA) review/response is delayed for more than 6 months and it necessitates revisions to the reported inventory.

6) The certification statement requirements should be simplified and the list of company officer that can certify the report expanded to allow the appropriate degree of flexibility.

The current proposal that the chief executive officer (CEO) of a company, organization or institution, or officer responsible for environmental compliance be required to certify the greenhouse gas emission reports is not practical and unnecessary. The 1605(b) program is a voluntary one, and is not governed by the Sarbanes-Oxley Act, which covers mandatory financial and securities information, and should not be held to the same standard. Even mandatory reporting under environmental regulatory statutes such as title V of the Clean Air Act does not require the CEO to sign the reports. These programs require the signature of a "responsible official, who shall certify the accuracy of the information submitted", not the CEO or entity compliance office.

This requirement may also have the unintended consequence of creating the perceived need for 3rd party verification. Although 3rd party audits would give a high degree of assurance to the reported numbers, the cost may discourage many participants from reporting.

It would be better to have a "responsible official", who is knowledgeable and fully cognizant of the organization's greenhouse gas mitigation program, be the signatory on the submitted reports. The responsible official works well for mandatory reporting requirements under programs such as Title V, and would be sufficient under a voluntary GHG reporting program. BP requests that "responsible official" be added to the definition of certifying officials.

7) Calculation, reporting and "registration" of emissions reductions

In addition to developing new guidance for the development of entity-wide emission inventories (Chapter 1 of the Technical Guidelines), DOE has also developed guidance for the reporting and registration of entity-wide emission reductions (Chapter 2 of the Technical Guidelines). DOE is encouraging entities to calculate reductions using emission-intensity methods when feasible. DOE is also allowing entities to determine emission reductions associated with change in absolute emissions, as long as they can demonstrate that the output associated with the covered emissions did not decline. BP feels that, although the tracking of emission intensity is important and valuable information (particularly in light of the President GHG target), the DOE 1605b program should be focused on reporting absolute emissions and that absolute emission should be used to measure emissions reductions and entity performance within a national registry.

Intensity information can be valuable (particularly in showing continued progress when actual emissions may not be decreasing), but reliance on intensity based reduction calculations complicates the emission reduction process and will compromise the validity of the reported emission reductions. Intensity-based emission reduction calculations can in actuality be decreases from a business-as-usual emissions projection, not a decrease in emissions. The DOE intensity-based methods can be use to describe (and receive certification for) a calculated emission reduction, for what is an actual increase in emissions. The simple example of emissions from a hypothetical refinery using barrels of crude throughput as an output metric illustrates how this can happen.

Refinery base period emissions: 5,000,000 tons GHG
Refinery base period throughput: 100,000 bbl/day
 $\text{Intensity}_B = (E_B/O_B) = 50$

Refinery reporting year emissions – 6,000,000 tons GHG
Refinery reporting year throughput – 125,000 bbl/day
 $\text{Intensity}_R = (E_R/O_R) = 48$

Intensity-base emission reduction equation (p. 254, Draft Technical Guidelines)

$$[(E_B/O_B)-(E_R/O_R)]*O_R=\text{GHG Emission Reduction}$$

Where:

E is greenhouse gas emissions (tons per year)
O is output measure (crude throughput bbl/day)
(E/O) is GHG intensity
R is reporting year
B is base period

$$\begin{aligned}\text{GHG Reduction} &= (50-48)*125,000 \\ \text{GHG Reduction} &= 250,000 \text{ tons GHG}\end{aligned}$$

For the example above, the reporting entity would be able to register a 250,000 ton GHG emission reduction, for what is an actual emission increase of 1,000,000 tons of GHG. The improvement in GHG intensity is good and should be recognized in some manner, but DOE will seriously jeopardize the credibility of the 1605b program if it begins to equate reductions in GHG intensity with reductions in absolute GHG emissions. DOE should focus on the registration of actual GHG emission reductions and not intensity-based reduction.

The proposed guidelines also prohibit the inclusion of reductions that were achieved as a result of reductions in output, including plant closings. This requirement is vague and could be difficult to prove for companies with a numerous product lines of varying GHG intensity. It also discriminates against companies reporting on an actual emission basis. These companies will be held responsible for emission gains from new or increased production. They should be able to recognize the emission reductions associate with productions decreases or shifts in services. The focus of the guideline should be to encourage as many emission reductions as possible. After all, it is the reduction of emissions of GHG to the atmosphere that results in the ultimate benefit to the environment. BP recommends that DOE drop any linkage to decreased output and focus the reduction program on the registration of actual emission reductions.

A voluntary program should embrace all actual reductions, but the interim final General Guidelines establishes a 2-tiered system in which an entity may “report” but not “register” emissions reductions made prior to 2003, even if the entity could meet the additional obligations required for “registration”. Because the requirements under “reporting” are less rigorous, emission reductions “reported” in to the proposed 1605b registry will be discounted, regardless of

the reduction verification quality. This is inconsistent with the intent of 1605b that was designed to give recognition to companies that took the initiative to voluntarily reduce GHG emissions and to ensure that these early reductions would be recognized in the event of a mandatory reduction program. DOE should ensure that all voluntary and demonstrable GHG emission reductions are, and will continue to be, fully recognized by allowing “registration” of pre-2003 emission reductions.

Restricting the “registration” of pre-2003 emission reductions would diminish the credibility of these reductions by associating them with the less rigorous “reported” emissions. This diminished recognition would not be due to the accuracy or quality of the reductions, but simply because of the year they occurred.

DOE must ensure the participants that all voluntary real reductions are, and will be in the future, fully recognized in order to encourage participation in a voluntary program. Ultimately, all actions of a company must pass some type of cost/benefit analysis. The decision to reduce GHG emissions will have some type of cost implication. That cost must be weighted against future benefits and risk. If there is the perceived risk that a company would be penalizing itself (by lowering its baseline and making it more difficult to achieve additional reductions in the event of a future mandatory GHG reduction program) by the voluntary actions it might take today to reduce emissions, there would be a huge motivation for the company to do nothing until required. This would defeat the primary intent of a voluntary program.

A company considering voluntary actions today will look to the past to see how other companies fared by participating in early voluntary programs. Under the interim final General Guidelines, those early-acting companies “reporting” GHG emission reductions pre-2003 would not receive the same recognition and benefit as companies that “register” emission reductions from 2003 onward. With no past indication that any pre-mandatory reductions they would make would not also be discounted, many companies would be reluctant to taking voluntary action. Seeing only the risk of losing a possible asset (i.e. emission reductions), many companies would choose to wait for the legal protection that a mandatory program would bring to their GHG emission reductions.

DOE has stated that revised 1605b registry needs to be associated with the Presidents GHG objectives. One of the stated ambitions of 1605b is that it be the repository for the wide variety of Federal climate programs to demonstrate progress. The “pre-2003” rule differences will be arbitrary and irrelevant from the perspective of these other Federal climate initiatives. The 1605b program would be much more universally applicable if it did not contain an arbitrary tiered approach to the classification of emission reductions solely based on date and not data.

BP proposes that DOE honor the original intent of the 1605(b) registry at its inception in 1994 and allow the “registration” of reductions made in good faith by entities prior to 2003. These pre-2003 reductions registered by a reporting entity would be subject to the same registration requirements outlined in the proposed General Guideline for “registered” emission reductions.

Because of the numerous issues associated with the calculation, reporting, and registration of GHG emission reductions outline in the previous paragraphs, BP strongly suggests that DOE proceed with finalizing guidance associated with the reporting of GHG inventories in the GHG registry, but that DOE not finalize that part of the guidance (sec. 300.7, 300.8 and Chapter 2 of the draft Technical Guidelines) at this time.

Adopting different timelines for revising and finalizing Chapters 1 and 2 of the Technical Guidelines will permit DOE to start implementation of the guidance for entity emissions inventorying methods, while additional work will be undertaken to address some notable issues in the emission reductions calculations. This will allow entities to undertake reporting of their inventories, using the enhanced guideline, and they can ‘road-test’ proposed approaches for calculating GHG emission reductions (Chapter 2). This shared experience would provide

essential input for creating a robust yet practical protocol for different emission reduction scenarios and relevant methodologies.

8) Incorporation of the API Compendium in the draft Technical Guidelines

The US DOE has cited the *API Compendium of Greenhouse Gas Emissions Methodologies for the Oil and Gas Industry* (referred to as the API Compendium) as part of its inventory guidance and thus, by reference, supports the use of the methodology therein for the oil & gas industry. The citation should be amended to reference the latest revision of the API Compendium (February 2004), which is different from the April 2001 “road test” currently referenced in the Draft Technical Guidelines. Some of the methodologies cited are also applicable for other industry sectors, especially the sections that pertain to combustion emissions, which would be applicable to all industrial, commercial and residential combustion situations.

Since updating emission estimation methods and relevant emission factors should be an evergreen process, DOE should incorporate the API Compendium by reference as the source of all emission factors and estimation methodologies for the oil & gas industry, so as not to require frequent reopening of the Technical Guidance document as emission factors or methodologies change. API has assumed responsibility for maintaining/updating the API Compendium.

9) The use of the quality rating system in the draft Technical Guidelines needs to be modified.

The practical application of quality ratings in the DOE Draft Technical Guidelines seems overly restrictive for many industry sectors, specifically the assignment of a C rating to all “default emission factors based on general activity data”. For many sectors, these are the most common emission estimation approaches used and it would take considerable R&D to develop new entity-specific factors. These situations should be treated in a manner similar to agriculture and forestry sectors, where the guidelines recognize that monitoring and/or development of specific emission factors are not practicable, and assign an “A” quality rating.

The Draft Technical Guidelines use the terminology “mass balance approach” in an inconsistent manner in different chapters and tables. The mass balance approach should consist of methodologies that use the basic concept of preservation of mass, i.e. quantities in equals quantities out. In cases where the mass is based on measured process data, the results should be assigned an “A” quality rating.

DOE should recognize in the General and Technical Guidelines that independent 3rd party review could also be used to verify the validity and quality of the emissions estimation approach used. This could be an option that is open to reporting entities in lieu of the strict definition of an average quality rating of 3.0 for enabling registration of GHG emission reductions.

10) Responsibility for electrical transmission line losses should not be incorporated in to the end-user emission reduction calculations

The draft Technical Guidelines recommend incorporation of line losses into the estimates of indirect GHG emissions from electricity and accounting for emission reductions. These losses should be accounted for by the owner/operator of the transmission and/or distribution lines. Only losses that occur downstream of the customer meter should be included in the customer's inventory. Both WRI/WBCSD and the California Climate Registry have reversed their decision on this matter and no longer assign line losses to customers. Line losses should be accounted for as direct emissions by the owner/operator of the transmission and/or distribution lines. Line losses that occur downstream of the customer meter should be included in the customer's inventory as indirect emissions. It is only in reporting “other indirect” emissions that line losses would be considered from the customers' perspective.

11) The draft Technical Guideline reference to flaring and coke burn as “waste combustion” should be corrected.

Section 1.B.3.2.1 of the draft Technical Guideline contains the statement “*Waste combustion*” such as flaring, or burning of catalyst coke in petroleum refining and the chemical industries, or the use of coke oven gas in the steel industry. This statement needs to be corrected. Flaring is mainly relied on for emergency relief purposes. Coke burn is an integral part of the catalyst cracking process, and process equipment is designed to recover heat from this combustion process. Flaring and the burning of catalyst coke should not be referred to as “waste combustion”.

12) Refinery gas is erroneously referred to as a waste product in the draft Technical Guidelines.

Section 1.C.5.1 refers to refinery gas as a “waste product”. Refinery gas is the major source of fuel at a refinery and the source of feedstock hydrocarbon for many processes at a refinery. It is by no means a “waste product” and any reference to it as a waste produce should be deleted.

13) DOE allocates fuel consumption based on the assumption that thermal generation is 80% efficient, and that any remaining fuel consumption is used for electricity generation.

DOE states that CHP and thermal energy generators should be able to obtain recognition for reductions that result from a broad range of different actions, including increased generation (since most CHP plants are more efficient than conventional power and heat generation), fuel substitution or improved system performance. The simple method DOE includes in the draft Technical Guidelines make a blanket assumption of an 80% efficiency assumption for steam generation. This may not be appropriate for all CHP cases and will lead to overestimation of the emissions associated with electricity productions from CHP facilities.

The method outlined in the draft Technical Guidelines on the allocation of CO₂ emissions that are associated with self-generation and export of electricity, steam or heat, is not consistent with program guidance from WRI/WBCSD, UK Emission Trading Scheme, California Climate Action Registry, or the work potential approach. BP recommends that further discussion is needed on what might be the most appropriate approach in order to reflect the true emission reduction potential for CHP plants. Until this work is completed, DOE should allow reporting entities to choose the most appropriate allocation methodology to apply to their CHP facilities.

14) DOE needs to be flexible with regards to the comment process for the proposed General Guidelines and the future Technical Guidelines.

In an effort to expedite the Guideline reform process, DOE has submitted the proposed Interim Final General Guidelines and Draft Technical Guidelines for public comment in advance of the development of the Reporting Elements which are “to be contained in the reporting forms to be used under the revised program Guidelines”.

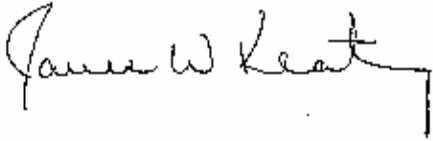
This staged approach to the Guideline proposal process complicates the ability to adequately comment on any of the three proposed documents. It also presents the potential for incomplete or contradicting comments on the proposed Guideline as a whole.

Clearly, the details of the Reporting elements could affect the interpretations of the General and technical Guidelines. For this reason, BP would suggest that the General Technical Guidelines be reopened for comment when the Reporting Elements are proposed.

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BP America appreciates the opportunity to provide these comments to DOE. Should you have any questions or require any clarification of our comments, please feel free to contact me by phone at 630-848-5476 or by email at keatinjw@bp.com.

Very truly yours,

A handwritten signature in black ink that reads "James W. Keating". The signature is written in a cursive style with a long horizontal line extending from the end of the name.

James W. Keating
Environmental Policy Advisor
Central HSSE